

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GERALD L. FOSTER,)	
)	
Claimant,)	IC 04-009411
v.)	
)	
WASHINGTON GROUP,)	FINDINGS OF FACT,
)	CONCLUSION OF LAW,
Employer,)	AND RECOMMENDATION
and)	
)	
ZURICH AMERICAN INSURANCE COMPANY,)	FILED OCT 14 2005
)	
Surety,)	
Defendants.)	
)	

INTRODUCTION

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Pocatello on June 29, 2005. Claimant appeared *pro se*. Thomas P. Baskin represented Defendants. The parties presented evidence. A brief was submitted. The case is ready for decision.

ISSUES

As modified and agreed upon by the parties at hearing, the issues to be resolved are:

1. Whether Claimant suffers a compensable occupational disease or is barred by Idaho Code §§ 72-437 and -439; and
2. Whether Claimant's condition is due in whole or in part to a subsequent intervening cause.

CONTENTIONS OF THE PARTIES

Claimant contends he suffers from carpal tunnel syndrome. His health insurer denied his claim, asserting carpal tunnel syndrome is covered under Idaho Workers' Compensation Law.

Defendants contend Claimant's carpal tunnel syndrome was not caused by his work and is otherwise not compensable.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant;
2. Defendants' exhibits 1 – 3 and 5 admitted at hearing (Claimant's pre-hearing deposition, originally marked as exhibit 4, was not offered at hearing); and
3. Post-hearing deposition of Michael Weiss, M.D.

After having fully considered all of the above evidence, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Claimant has worked as a pipe fitter for most of his adult life. He worked for Employer as a pipe fitter and welder for one year. The project ended and he was laid off as of July 18, 2003. During the nine-month lay off, he worked a number of remodel and improvement projects around his home. Most significantly, he built a fish pond in the yard.

2. During the lay off, while building the fish pond, Claimant began experiencing numbness in his right arm. Claimant assumed he had hurt it building the fish pond. On June 18, 2004, he sought medical attention. Kris Walker, M.D., scheduled an EMG. That test confirmed mild to moderate carpal tunnel syndrome in his right upper extremity. Dr. Walker opined Claimant's carpal tunnel syndrome was not related to his work for Employer, but was caused or

exacerbated by his work on his home projects.

3. Claimant suffered left arm symptoms in 1996. He sought medical attention and was diagnosed with “early arthritis” and possible impingement. No later medical records describe left upper extremity symptoms.

4. On April 20, 2005, Michael Weiss, M.D., reviewed Claimant’s records at the request of Surety. He opined the records showed Claimant’s right carpal tunnel syndrome was unrelated to work for Employer.

DISCUSSION AND FURTHER FINDINGS

5. Carpal tunnel syndrome may arise as a compensable occupational disease under Idaho Workers’ Compensation Law. *See, Kinney v. Tupperware Co., 117 Idaho 765, 792 P.2d 330 (1990).* As with other potential occupational diseases, it must arise as a result of the Claimant’s work. Idaho Code §§ 72-437, -439. Nothing in Kinney suggests that the Idaho Supreme Court has declared that all carpal tunnel syndrome cases are a proper subject for the Industrial Commission or workers’ compensation insurers.

6. Dr. Weiss’ testimony clearly supports the common sense argument that not all carpal tunnel syndrome cases are caused by one’s work. The timing of the onset of Claimant’s symptoms and the home projects he was performing demonstrate Claimant’s carpal tunnel syndrome did not arise as a result of his work for Employer.

CONCLUSION OF LAW

Claimant’s carpal tunnel syndrome is noncompensable as an occupational disease under Idaho Workers’ Compensation Law. It did not arise as a result of his employment by Employer.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusion of Law as its own and issue an appropriate final order.

DATED this 13TH day of OCTOBER, 2005.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 14TH day of OCTOBER, 2005, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

Gerald L. Foster
701 East Mountain Park Road
Chubbuck, ID 83202

Thomas P. Baskin
P.O. Box 6756
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db

/S/_____